

Former CEO of Health System Agrees to Pay \$1 million to Settle False Claims Act Case with U.S. Department of Justice

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In the most recent example of its continued effort to hold individuals accountable for corporate misconduct, the U.S. Department of Justice (“DOJ”) announced on September 27, 2016, that the former CEO of Tuomey Healthcare System has agreed to pay \$1 million to settle claims arising from his involvement in the hospital’s violations of the Stark Law. In addition to the \$1 million civil fine, the CEO is also excluded for four years from participating in any federal health care programs, including providing management or administrative services that are paid in part by federal health care programs.

The underlying corporate misconduct related to violations of the Stark law, which prohibits hospitals from billing Medicare for certain services that have been referred by physicians with whom the hospital has an improper financial relationship. A whistleblower sued Tuomey in 2005 alleging that certain physician contracts and payments violated the Stark Law, causing the hospital to submit false claims for payment to Medicare in violation of the False Claims Act (“FCA”). After years of litigation, a jury in a 2013 retrial found that Tuomey had violated both the FCA and the Stark Law. The jury also found that Tuomey had filed more than 21,000 false claims with Medicare. The trial court entered an order requiring Tuomey to pay \$237.4 million. That judgment was later affirmed by the United States Court of Appeals for the Fourth Circuit. On October 16, 2015, Tuomey and the government agreed to a settlement for \$72.4 million, and the hospital was sold to Palmetto Health, a multi-hospital health care system based in Columbia, SC.

The government alleged that the CEO had caused Tuomey to enter into the contracts with 19 specialist physicians because he was concerned that Tuomey could lose lucrative outpatient procedure referrals to a new freestanding surgery center. The government also argued that the CEO ignored and suppressed warnings from one of Tuomey’s attorneys that the contracts were “risky” and raised “red flags.” In 2013, the CEO was fired by Tuomey’s Board of Directors.

The settlement reflects the government’s increased emphasis on holding individuals

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accountable for corporate behavior, and comes just a little over a year after the DOJ Deputy General Sally Yates issued a memo that refocused government law enforcement inquiries on individual misconduct. The Yates memo begins by proclaiming that “One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing . . . [accountability] deters future illegal activity, incentivizes changes in corporate behavior . . . and promotes the public’s confidence in our justice system.” That sentiment is reflected in the DOJ Press Release announcing the settlement, which states “Today’s settlement demonstrates that the Justice Department and its law enforcement partners will hold individual decision makers accountable for their involvement in causing the companies and facilities they run to engage in unlawful activities.”

A copy of the DOJ Press Release is available here:

<https://www.justice.gov/opa/pr/former-chief-executive-south-carolina-hospital-pays-1-million-and-agrees-exclusion-settle>